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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,716	07/22/2003	Matthew Hayduk	034017R003	4925
441 7590 02/22/2008 SMITH, GAMBRELL & RUSSELL 1130 CONNECTICUT AVENUE, N.W., SUITE 1130 WASHINGTON, DC 20036				
EXAMINER CARTAGENA, MELVIN A				
ART UNIT		PAPER NUMBER		
3754				
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02/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/623,716

Applicant(s)

HAYDUK, MATTHEW

Examiner

MELVIN A. CARTAGENA

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11,13-21,23-35,40-45,51-53 and 56-69 is/are pending in the application.
- 4a) Of the above claim(s) 45 and 51-53 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11 and 13-18 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,19-21,23-35,40-44 and 56-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-7, 19-21, 23-30, 34, 56-58 and 60-63 rejected under 35 U.S.C. 102(b) as being anticipated by US 5,186,905 to Bertram et al.

Bertram shows a cartridge port for dispensing foam as seen in Figs. 1 and 5 having a housing 11, a fluid reception chamber 13 formed out of a cold flow material (Teflon) and having a rod passageway formed to received a rod 17, annular locking means and closure caps 63, compression washers 26, at least two chemical inlet ports 16, an enlarged solvent fluid receiving chamber 25, removable back and front cap 30 covering the solvent receiving chamber and retaining seals 23 and 24.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 31-33, 35, 40-44 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,186,905 to Bertram et al. in view of US 4,993,596 to Brown.

Bertram shows all claimed features as discussed above but is silent about using threads to assemble the components of the mixing chamber and assembling the chamber without the use of tools. Brown shows a mixing and dispensing gun with using threads 134 and 116 to assemble the dispensing gun without the use of tools, see the abstract, lines 1-9. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Bertram to utilize threads to assembly the components of the dispensing gun and to assembly the gun by hand without the use of tools as taught by Brown since the above combination represents a substitute of well-known alternative equivalent mechanical fastening to mechanically assemble the multiple components of the gun which is well known within the level of skill in the art, and eliminating the need for using tools to assemble the dispensing gun makes the assembly and disassembly fast and foolproof.

5. Claims 64-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,186,905 to Bertram et al. I view of US 4,043,486 to Wisbey.

Bertram shows all claimed features as discussed above except for a radial extending projection from the cold flow material. Wisbey shows a mixing apparatus as seen in Fig. 1, having a fluid receiving chamber 10 with a radially extending projection 12 to prevent the chamber from adjusting axially, threaded cap 90 and compression means 120. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to secure the fluid receiving chamber by using a radially extending projection and compression plates to enable positive location of the chamber relative to the housing as taught by Wisbey.

Allowable Subject Matter

6. Claims 8-11 and 13-18 allowed.

Response to Arguments

7. Applicant's arguments filed November 28, 2007 have been fully considered but they are not persuasive. Applicant's arguments that the press fit radial insert 13 of Bertram would not have the strength to withstand the loads applied by the reciprocating movement of the valving rod are not persuasive because the valving rod is designed to freely reciprocate inside the receiving chamber and if forces of the magnitude cited by the applicant are needed to actuate the rod, the dispensing device would become inoperative or the connection between the valving rod and its actuator would also sheer off. In addition; as in device of Bertram, the axial load is also taken by the compression exerted by the Belleville washers 26, in the same manner as the applicant's. The radial inserts 13 in the device of Bertram maintain the receiving chamber inlets in registration with the housing.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3754

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melvin A. Cartagena/
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754